

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 3134/MUM/2024
Assessment Year: 2016-17**

Rajesh Motiram Panjuani,
17 Jay Ambe, 154 Garodia Nagar,
Ghatkopar (East),
Mumbai-400077.

**PAN NO. AAHPP 6752 F
Appellant**

Vs. ACIT Central Circle-6(2),
Air India Building, Churchgate,
Mumbai-400020.

Respondent

Assessee by : Mr. Bharat Kanabar
Revenue by : Mr. R.R. Makwana, Sr. DR

Date of Hearing : 17/10/2024
Date of pronouncement : 17/10/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 21.05.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – 54, Mumbai [in short ‘the Ld. CIT(A)'] for assessment year 2016-17, raising following grounds:

“Ground No. 1



"On the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeals) -54, Mumbai erred in law and in facts by confirming the addition of Rs.11,90,200 made on account of alleged brokerage received in cash solely on the basis of estimating brokerage amount (by multiplying figures with 100) from material seized at third party premises under search and wrongly interpreting the statement of your appellant recorded under section 131 of the Income-tax Act that your appellant has accepted brokerage in cash."

GROUND NO 2 (Without Prejudice to Ground No 1 above)

"On the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeals) -54, Mumbai, erred in law and in facts in not allowing ad hoc expenses as deduction from brokerage income alleged as unaccounted brokerage received in cash of Rs.11,90,200 (refer ground no 1 above)."

2. Briefly stated, facts of the case are that the assessee filed his return of income on 29.10.2016 declaring total income at Rs.7,45,080/-. The assessee was engaged in the real estate agent activity having brokerage income. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The Assessing Officer noted that during the course of search action u/s 132 of the Act in the case of 'Bhoomi and Ekata' group, certain incriminating material was found indicating receipt of brokerage in cash by the assessee. The premises of the assessee were accordingly covered under survey u/s 133 of the Act and the statement of the assessee was recorded, wherein he admitted receipt of brokerage from 'Bhoomi and Ekata' group in cash and admitted that same was not disclosed in the return of income filed by him. Accordingly, the Assessing Officer issued show cause notice to the assessee. But no reply was submitted by the assessee and therefore, the Assessing Officer made the addition of



Rs.11,90,200/- as brokerage earned by the assessee under the head 'profit and gains from business or profession'.

3. On further appeal, the assessee claimed before the Ld. CIT(A) that no such brokerage income was received by the assessee and addition was made without any show cause notice issued. But the Ld. CIT(A) upheld the addition observing as under:

"8.2 In this regard it is seen that the AO has mentioned in the assessment order that during the course of search action u/s 132 in the case of Bhoomi and Ekta Groups the premises of the assessee was also covered under Survey u/s 133A of the Act, where the statement of the assessee was recorded. In his statement the assessee admitted that he had received brokerage which had not been disclosed in the return of income filed by him. Material was seized in the case of Bhoomi and Ekta Groups where it was found that assessee had received brokerage in cash which was not accounted in his books and was not offered for tax computation. The same was admitted by the assessee in his statement. On the basis of material found during the search action, the AO added Rs. 11,90,200/- as brokerage earned under the head of "Profit & Gains of business or profession"

8.3 In view of the above, it is seen that the addition has been made by the AO on the basis of the incriminating material found and also the statement of the assessee himself admitting the receipt of brokerage in cash. Thus, I do not see merits in the contentions of the appellant. The addition made is upheld and the ground of appeal is dismissed."

4. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

5. We have heard rival submission of the parties and perused the relevant material on record. We find that the Assessing Officer has made addition of Rs.11,90,200/- on the basis of the documents found during the course of search action at the premises of Shri 'Bhoomi' and 'Ekata' group coupled with the statement of assessee, wherein he accepted this fact of the receipt of the brokerage income



in cash. The Assessing Officer in the assessment order has reproduced the relevant extract of the seized material. For ready reference same is reproduced as under:

“4. Material was seized in the case of Bhoomi Group of cases which shows that the assessee has received brokerage in cash which has not been accounted for in his books and has not been offered for tax. Details of square meters and rate per square meter with dates are mentioned in the seized material. It also contains details of cheque payments made to the assessee. Therefore, the preponderance of probability is that the brokerage in cash as appearing in the seized material has also been received by the lessee. Relevant extract of the seized material is reproduced

Brok (rajesh panj) m-770 @ 5500 - 4000 (1 %) ac nil	25-04-2015	1244
Brokerage (Rajesh panjuani) as pr below (ac nil)	06-05-2015	80
M-60 @ 5500/- - 35521/-		
M-30 @ 5400/- = 17400A		
M-320 @ 4500/- = 155000/-		
M-210@4700/- = 106240/-		
total = 31 3961 /-		
less cq : - 306000/-		
balance = 7961 /-		
Brok. (rajesh panjuani) as below	20-06-2015	2810
M-1 420 @ 4700 - 3500 = 1 834/-		
M-340 @ 5075 - 3500 = 576/50		
M-270 @ 4750 - 3375 = 4007-		
M-270 (runwal tdr excess refund - rajesh panjuani)	08-07-2015	40
Brok. M-260 @ 5800 - 3200 (1%) Rajesh pan]	11-08-2015	728



Brok (Rajesh panjuani) as below	17-08-2015	7000
M-1 0000 (shivalik purchase) @ 3400-2982(1%) = 4500/-		
M-710 @ 5775 - 3200 (kabra)(1%) = 1968/-		
M-1 90 @ 5900 - 3300 (Dhoot dev)1 % = 532/-		

1. it can be seen that the above data contains detailed information of computation of brokerage paid to the assessee. The figures appearing above are coded. To get the correct figures, the amounts have to be multiplied by 100. On decoding, the brokerage earned by the assessee during the year comes to Rs.1,90,200/-. The same is added to income under the head 'Profits and gains of business or profession'.

5.1 On perusal of the above material, it is evident that commission has been computed on separate real estate transactions and the brokerage also includes payment through cheque which has not been declined/disputed by the assessee. Therefore, once, the brokerage recorded in same seized paper as received in cheque has been accepted by the assessee, we do not find any reason for not accepting the brokerage recorded in cash in the same seized paper. No justified explanation has been provided by the assessee in this respect. Accordingly, we reject the contention of the assessee that no such brokerage was received particularly when the assessee was confronted during survey proceedings and he accepted the fact of receipt of brokerage in cash, which prevented the tax authorities or the revenue from making further inquiry during the course of survey. Thus, the contentions of the assessee are rejected. However, the Ld. counsel for the assessee alternatively submitted that



addition has been made for the gross brokerage and no benefit for the expenses incurred against said brokerage income was allowed to the assessee. But the Ld. counsel did not bring on record any evidence of incurring any such expenses against said brokerage income received in cash. The regular expenses against brokerage income reported as received by way of cheque has already been claimed by the assessee in the profit and loss account for the brokerage income shown in the regular return of income and allowed to the assessee, therefore, no further deduction could be allowed against the brokerage income recorded in the seized material. The ground No. 1 and 2 of the appeal of the assessee are accordingly dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 17/10/2024.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 17/10/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai